



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	08/14/13	Bill No:	<u>Senate Bill 323</u>
Tax Program:	Sales and Use	Author:	Lara, et al.
Sponsor:	Equality California	Code Sections:	RTC 6361
Related Bills:		Effective Date:	Effective Immediately but operative 90 days after 1 st calendar quarter

BILL SUMMARY

In regard to sales and use taxes, this bill specifies that a nonprofit youth organization that discriminates on the basis of gender identity, sexual orientation, or religious affiliation is not an “organization” that is regarded as a consumer, as specified.

Summary of Amendments

Since the previous analysis, this bill was amended to clarify what constitutes discrimination for purposes of the exemption, and incorporate BOE suggested amendments for a delayed operative date.

ANALYSIS

CURRENT LAW

Except where specifically exempted by statute, California’s Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption of tangible personal property purchased from a retailer. The law does not generally exempt nonprofit organizations, persons engaged in charitable activities, or those who enjoy certain income tax or property tax privileges from payment of sales or use tax on their sales or purchases. Therefore, sales of tangible personal property by nonprofit organizations are generally subject to tax to the same extent as sales by any other retailer.

Generally, persons engaged in the business of selling tangible personal property must obtain a seller’s permit. These persons must also report the tax on a BOE-prescribed return. However, under various statutes, some small or service-based businesses and certain nonprofit organizations are regarded as statutory consumers. Qualifying sales by a statutory consumer are not considered retail sales. Therefore statutory consumers need not report or pay tax on their sales or obtain a seller’s permit, unless they make other non-qualifying retail sales. Rather, tax is generally owed on sales to statutory consumers of the products intended for sale.

The law² identifies specific youth organizations, such as the Boy Scouts, Pop Warner Football, and Young Women’s Christian Association as statutory consumers when they sell particular goods. Also, this provision identifies other nonprofit youth organizations generally, and youth groups sponsored by or affiliated with a qualified educational institution (school-sponsored youth groups) as statutory consumers. The law regards

¹ Part 1, Division 2 (commencing with Section 6001) of the Revenue and Taxation Code (RTC).

² RTC Section 6361.

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these youth groups as consumers, rather than retailers, of food, nonalcoholic beverages and other tangible personal property made or produced by the organization's members. To qualify, the sales must be made on an irregular or intermittent basis, and the sales' profits must be used exclusively in furtherance of the organization's purpose.

For nonprofit youth organizations *that aren't specifically named* within the statute or that are not school-sponsored youth groups, the law specifies additional conditions:

- The organization must qualify for tax-exempt status under Internal Revenue Code Section 501(c).
- The organization's primary purpose must be to provide a supervised youth competitive sports program, or to promote good youth citizenship.
- The organization may not discriminate on the basis of race, sex, nationality, or religion.

The statutory consumer concept is primarily intended to minimize reporting burdens for certain businesses and organizations. It also minimizes the associated revenue loss that accompanies a complete tax exemption. Other statutory consumers identified in law include, among others, PTAs, nonprofit veterans' organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, licensed hearing aid dispensers, and others for certain sales.

PROPOSED LAW

This bill amends RTC Section 6361 to disallow certain nonprofit youth organizations and nonprofit private educational institutions from qualifying as statutory consumers if they discriminate on the basis of gender identity, sexual orientation or religious affiliation.

Additionally, this bill disallows statutory consumer status for specifically named youth groups if they discriminate on the basis of gender identity, race, sexual orientation, nationality, religion, or religious affiliation.

For purposes of the section, an organization discriminates if it either has a formal policy of discrimination or refuses to provide the BOE written assurance of a formal policy barring discrimination based on the listed categories.

This bill also amends the Corporation Tax Law, which falls under the purview of the FTB and is not discussed in this analysis.

COMMENTS

1. **Sponsor and purpose.** As the bill's sponsor, Equality California believes this legislation will encourage groups to end their discriminatory policies that unfairly exclude lesbian, gay, bisexual and transgender people. The sponsor notes that "California does not tolerate discrimination, and by removing this exemption, we will make it clear to the Boy Scouts and all other organizations that discrimination has a real cost."
2. **The August 14, 2013 amendments** clarify that an organization discriminates, for purposes of this section, if the organization either has a formal policy of discrimination or refuses to provide to the BOE written assurance of a formal policy barring discrimination based on gender identity, race, sexual orientation, nationality, religion, or religious affiliation. The amendments also incorporate a BOE suggested delayed operative date. **The April 16, 2013 amendments** made changes to the FTB-related provisions.

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3. **This bill does not materially impact the BOE's tax audit or administrative functions.** Generally, due to the low sales volume and lack of complexity, the BOE seldom audits nonprofit youth groups. Also, the BOE's audit program does not currently include specific guidelines for the examination of retailers' discriminatory practices. If this bill is enacted, the BOE would need to examine the organization's by-laws and/or articles of incorporation and any other evidence of possible discriminatory practices when conducting an audit of a nonprofit youth group. The latest amendments require an organization to provide the BOE with an assurance that its policy does not discriminate. Such a requirement should assist administering the new requirement.
4. **Consequences of a discriminatory youth organization or group.** If this bill becomes law, any youth group or organization that discriminates in violation of this statute loses its statutory consumer status. These organizations must then obtain seller's permits, file sales and use tax returns, and remit sales tax on all their taxable sales of food, nonalcoholic beverages and handcrafted items. However, tax will no longer apply to their purchases for resale.

COST ESTIMATE

If enacted, the BOE will incur costs for notification and response to taxpayer, media, and public inquiries. However, these costs would be absorbable.

REVENUE ESTIMATE

Based on industry information, in fiscal year (FY) 2011-12, nonprofit youth organizations' total merchandise sales amounted to approximately \$23.080 million. The gross margin,^[1] the amount not currently subject to the tax, totaled \$5.571 million. The Department of Finance's (DOF) forecast of statewide taxable sales assumes that taxable sales will increase by approximately 13% by FY 2013-14. Assuming the youth organizations merchandise sales and gross margins follow the same forecast as DOF's, we estimate gross margins will amount to \$5.579 million in FY 2013-14. Additionally, we estimate that gross margins will amount to \$5.583 million in FY 2014-15, and \$5.587 million for FY 2015-16. The following tables provide the potential revenue gain for all youth organizations, followed by the amount attributable to the Boy Scouts alone.

^[1] The difference between the cost of goods to the organizations and the organization's sales price of the goods.

Potential Revenue	2013-14	2014-15	2015-16
Gross Margin	\$ 5,578,957	\$ 5,583,141	\$ 5,586,882
State General Fund (3.9375%)	219,671	219,836	219,983
Fiscal Recovery Fund (.25%)	13,947	13,958	13,967
State Education Protection (.25%)	13,947	13,958	13,967
Local Revenue Fund 2011 (1.0625%)	59,276	59,321	59,361
Local Revenue Fund (.5%)	27,895	27,916	27,934
Local Public Safety Fund (.5%)	27,895	27,916	27,934
Local Bradley Burns (1.00%)	55,790	55,831	55,869
Special Districts (.88%)	49,095	49,132	49,165
Total Potential Revenues (All Organizations)	\$ 467,517	\$ 467,867	\$ 468,181

Boy Scouts Potential Revenue	2013-14	2014-15	2015-16
Gross Margin	\$2,999,660	\$3,001,910	\$3,003,921
State General Fund (3.9375%)	118,112	118,200	118,279
Fiscal Recovery Fund (.25%)	7,499	7,505	7,510
State Education Protection (.25%)	7,499	7,505	7,510
Local Revenue Fund 2011 (1.0625%)	31,871	31,895	31,917
Local Revenue Fund (.5%)	14,998	15,010	15,020
Local Public Safety Fund (.5%)	14,998	15,010	15,020
Local Bradley-Burns (1.00%)	29,997	30,019	30,039
Special Districts (.88%)	26,397	26,417	26,435
Total Potential Revenues - Boy Scouts	\$ 251,372	\$ 251,560	\$ 251,729

Qualifying Remarks. Since we have no information that discloses which youth organization or youth group may be involved in discriminatory practices, we have estimated potential revenue for all youth organizations currently considered statutory consumers, and have assumed none will change their practices upon enactment of the bill.

Also, we have no information that discloses the composition of the merchandise sales that will remain unaffected by enactment of this bill. For example, sales of food for home consumption, such as popcorn and cookies, are currently exempt from tax, and will remain exempt under this bill. Also, we do not know what portion of the total merchandise sales consists of items made or produced by the organization. Since current law only provides special tax treatment to these items, and not general merchandise sales, the revenue estimate may be overstated to the extent it includes amounts attributable to general merchandise sales.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

Analysis prepared by:	Sheila T. Waters	(916) 445-6579	08/19/13
Revenue estimate by:	Bill Benson	(916) 445-0840	
Contact:	Michele Pielsticker	(916) 322-2376	

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